UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

MICHAEL PUNG, as the personal
representative of the ESTATE OF
TIMOTHY SCOTT PUNG,
    Plaintiff,

    v.

PETER M. KOPKE, in his personal
capacity,
PATRICIA DEPRIEST, in her personal
capacity;
STEVEN W. PICKENS, in his official
and personal capacity, and
COUNTY OF ISABELLA
    Defendants

    Case No.: 18-cv-1334
    Honorable Robert J. Jonker

EX PARTE MOTION

_____/

OUTSIDE LEGAL COUNSEL PLC
PHILIP L. ELLISON (P74117)
Attorney for Pung/Estate
PO Box 107
Hemlock, MI 48626
(989) 642-0055
(888) 398-7003 - fax
pellison@olcplc.com

WILLIAM SELESKY (P77750)
Department of Attorney General
Asst Attorney General - Labor Div
Counsel for Kopke
P.O. Box 30217
Lansing, MI 48909
(517) 373-2560
SeleskyW1@michigan.gov

CUMMINGS, MCCLOREY, DAVIS & ACHO
ALLAN C. VANDER LAAN (P33893)
BRADLEY C. YANALUNAS (P80528)
Counsel for Pickens/Isabella Co
2851 Charlevoix Dr, S.E., Ste 327
Grand Rapids, MI 49546
(616) 975-7470
avanderlaan@cmda-law.com
byanalunas@cmda-law.com

CHARLES A. LAWLER (P65164)
CLARK HILL PLC
Counsel for DePriest
212 E. Cesar E. Chavez Ave.
Lansing, Michigan 48906
(517) 318-3100
clawler@clarkhill.com

EX PARTE MOTION FOR LEAVE TO GIVE
NOTICE OF SUPPLEMENTAL AUTHORITY

NOW COMES Plaintiff Pung (PR), by counsel, and moves for leave to provide new

supplemental authority regarding the argument raised by Defendant DePriest (**MTD, ECF**

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No. 77, PageID.705) and Defendants Isabella County/Pickens (**MTD, ECF No. 72-1, PageID.600-601**) as to the "*Rooker-Feldman* doctrine." On February 26, 2020, the Sixth Circuit issued a published decision in *VanderKodde v. Mary Jane Elliott, P.C.*, CA6 Case Nos. 19-1091/1127/1128, __ F.3d __ (6th Cir. 2020).[1] That decision explains that *Rooker-Feldma*n does not apply when "the plaintiff's injuries stemmed from the defendant's conduct, not the [final] state-court judgment" even if "a party attempts to litigate in federal court a matter previously litigated in state court."

Judge Sutton's concurrence provides even more colorful and useful direction to this Court—"*Rooker-Feldman* is back to its old tricks of interfering with efforts to vindicate federal rights and misleading federal courts into thinking they have no jurisdiction over cases Congress empowered them to decide." As essentially (but less colorfully) argued by Plaintiffs, "lawyers" like those for these Defendants "continue to invoke the rule and judges continue to dismiss federal actions under it" in an erroneous fashion. And most importantly, Judge Sutton explains that "[a]bsent a claim seeking *review* of a *final state court judgment*, a federal court tempted to dismiss a case under *Rooker-Feldman* should do one thing: <u>Stop</u>." (emphasis added).

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BRIEF IN SUPPORT

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Courts of the Western District of Michigan regularly and consistently allow, in its individualized discretion, leave to file supplemental authority which assists the Court with resolving pending legal issues. E.g. *Hertel v. Mtg. Electronic Registration Sys*, Case No.

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[1] A copy can be downloaded at https://www.opn.ca6.uscourts.gov/opinions.pdf/20a0057p-06.pdf.

12-cv-174, 2013 U.S. Dist. LEXIS 63454, at fn.11 (WD Mich, May 3, 2013). Such

discretion is asked to be exercised here.

RELIEF REQUESTED

WHEREFORE, the Court is requested to enter an order receiving *VanderKodde v.*

Mary Jane Elliott, P.C. as precedentially-binding supplemental authority. A copy is

attached or may be downloaded at https://www.opn.ca6.uscourts.gov/opinions.pdf/

20a0057p-06.pdf.

Date: February 26, 2020   RESPECTFULLY SUBMITTED:

/s/ Philip L. Ellison
OUTSIDE LEGAL COUNSEL PLC
PHILIP L. ELLISON (P74117)
Counsel for Plaintiffs

OUTSIDE LEGAL COUNSEL PLC
www.olcplc.com

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CERTIFICATE OF SERVICE

I, the undersigned attorney of record, hereby certify that on the date stated below,

I electronically filed the foregoing with the Clerk of the Court using the ECF system which

will send notification of such filing to all counsel or parties of record.

Date: February 26, 2020   RESPECTFULLY SUBMITTED:

/s/ Philip L. Ellison
OUTSIDE LEGAL COUNSEL PLC
PHILIP L. ELLISON (P74117)
Counsel for Plaintiffs

OUTSIDE LEGAL COUNSEL PLC
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